

46 Am. Jur. 2d Judges § 125

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

a. Bias or Prejudice as Grounds for Disqualification, in General

§ 125. Presumption that judge is unbiased and unprejudiced

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1), 49(2)

There is a strong presumption that judges are impartial participants in the legal process, whose duty to preside as qualified is as strong as their duty to refrain from presiding when not qualified,¹ and that a judge will not involve him- or herself in a proceeding in which he or she cannot be impartial.² The law thus presumes that a judge is unbiased and unprejudiced.³ To overcome the presumption, the evidence must produce a reasonable doubt about the validity of the presumption,⁴ although other courts have held that the party seeking a judge's recusal must prove that the trial judge was biased or prejudiced by a preponderance of the evidence.⁵ Under some authority, the moving party must establish that the trial judge has a personal prejudice for or against a party.⁶

With respect to a claim for actual prejudice, a judge is presumed to be impartial,⁷ and thus a party moving for disqualification bears the burden of proving actual bias or prejudice.⁸ Judges are credited with the ability to remain objective notwithstanding their having been exposed to information which might tend to prejudice a person.⁹ A party claiming judicial prejudice must establish affirmatively that the trial justice had personal bias or prejudice by reason of a preconceived or settled opinion of a character calculated to impair his or her impartiality seriously and to sway his or her judgment.¹⁰

Caution:

A criminal defendant seeking to disqualify a judge on the basis of bias or prejudice bears a heavy burden of overcoming the presumption of judicial impartiality.¹¹

CUMULATIVE SUPPLEMENT

Cases:

The burden of proof required for recusal of a trial judge under rule requiring a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned is an onerous one; there must be a showing of facts of a character calculated seriously to impair the judge's impartiality and sway his judgment. Ky. Sup.Ct.Rules, Rule 4.300, Code of Judicial Conduct, Canon 3E. [Thomas v. Commonwealth](#), 605 S.W.3d 545 (Ky. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Jefferson-El v. State](#), 330 Md. 99, 622 A.2d 737 (1993); [In re Disqualification of Kilpatrick](#), 47 Ohio St. 3d 605, 546 N.E.2d 929 (1989).
- 2 [State v. Crockett](#), 801 S.W.2d 712 (Mo. Ct. App. E.D. 1990).
- 3 [Zavodnik v. Harper](#), 17 N.E.3d 259 (Ind. 2014); [Rice v. State](#), 134 So. 3d 292 (Miss. 2014); [Schweitzer v. Mattingley](#), 2016 ND 231, 887 N.W.2d 541 (N.D. 2016); [In re Disqualification of Crawford](#), 142 Ohio St. 3d 73, 2014-Ohio-5876, 28 N.E.3d 64 (2014).
- 4 [Rice v. State](#), 134 So. 3d 292 (Miss. 2014).
- 5 [State v. Greenway](#), 170 Ariz. 155, 823 P.2d 22 (1991).
- 6 [Lasley v. State](#), 510 N.E.2d 1340 (Ind. 1987); [Jefferson-El v. State](#), 330 Md. 99, 622 A.2d 737 (1993).
As to the requirement that the bias be personal, see § 128.
- 7 [Boyd v. State](#), 321 Md. 69, 581 A.2d 1 (1990).
- 8 [Boyd v. State](#), 321 Md. 69, 581 A.2d 1 (1990); [People v. Houston](#), 179 Mich. App. 753, 446 N.W.2d 543 (1989).
- 9 [Jaske v. State](#), 553 N.E.2d 181 (Ind. Ct. App. 1990).
- 10 [Parrillo v. Parrillo](#), 495 A.2d 683 (R.I. 1985).
- 11 [State v. Richter](#), 240 Neb. 913, 485 N.W.2d 201 (1992).

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